Third, the ILEC and its affiliate must maintain separate books, records and accounts;

Fourth, the ILEC and its affiliate must have separate officers, directors and employees;

Fifth, the affiliate must not obtain credit in a way that would enable a creditor, upon default, to access the ILEC's assets;

Sixth, the ILEC must not discriminate in favor of its affiliate in the provision of goods, services, facilities or information, or in the establishment of standards; and

Seventh, the affiliate must interconnect with the ILEC pursuant to a tariff or interconnection agreement, and, the ILEC must provide to unaffiliated entities whatever network elements, facilities, interfaces and systems that are provided to the affiliate.[30]

These seven separation requirements mirror restrictions found in Section 272 for a BOC's interLATA affiliate upon its authorization to provide interLATA services. These restrictions are insufficient as a starting point for the type of affiliate contemplated in this proceeding. As explained below, the FCC cannot use the Section 272 model because it is premised on a very different legal and competitive situation than is present at this time. Therefore, the Commission must require additional separation to achieve the *NPRM*'s goals. These minimally acceptable conditions include that the affiliate have substantial independent ownership, that it obtain capabilities of the ILEC network on a UNE basis only, and that the affiliate and the ILEC not engage in joint marketing or advertising of their services.

1. Section 272 is the Wrong Model for the Separation Appropriate in this Proceeding.

Section 272 of the Act establishes conditions by which a BOC must offer interLATA services once it satisfies the initial entry conditions specified in Section 271. The Section 271 requirements are designed to ensure, inter alia, that the local market in the relevant state is sufficiently competitive. Congress mandated that, before authorizing the BOCs to enter the in-region, intraLATA market, the Commission must be "satisfied on the basis of an adequate factual record that the BOC has undertaken all actions necessary to assume that its local telecommunications market is, and will remain, open to competition."[31] Section 272's obligations do not come into play until after a BOC satisfies these conditions. Thus, the Section 272 requirements are premised on the assumption that the interLATA affiliate will operate in an environment where Section 251(c) is fully implemented and the local exchange is open to competition– assumptions that are very different from the competitive situation in which the affiliate proposed in the *NPRM* will operate.

Indeed, Section 272 provides little, if any, guidance on the separation necessary in the current local environment, where ILECs have *not yet* complied with Section 251. In this environment, the Section 272 restrictions are woefully inadequate. They assume that competitors will have equivalent opportunities to match the interLATA affiliate's products, both its traditional long distance products and any combined local/long distance product offering. Whereas some level of competition is assumed in the Section 272 restrictions, such competition was seen as helping to temper an interLATA affiliate's advantages arising from its affiliation. By contrast, no such protections are available here.

(...continued)

30 *See NPRM,* ¶ 96.

31 *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-137, ¶ 386 (rel. Aug. 19, 1997).

Further, by restricting the reach of Section 251(c), the *NPRM*'s proposals actually could have the perverse result of limiting the scope of competition, thereby increasing the need for regulatory caution. In such circumstances, the Commission must establish standards that will be effective *in the absence of competition.* It must assume that the ILEC's monopoly remains (as it does at this time), and craft rules that will be effective at controlling the ILEC's monopoly power. It may not assume competition that does not exist and transpose a competitive model to a pre-competitive context.

2. The Commission Should Require that an Advanced Services Affiliate have a Substantial Percentage of Outside Ownership Different from the ILEC.

In order for an advanced services affiliate to be truly separate from the ILEC, it should be separate not only in actions, but in ownership. The Commission should require that a substantial percentage of ownership of the affiliate be held in hands that is different from the ownership of the ILEC. An independent ownership requirement is essential to achieving a "truly separate" entity that operates "just like any other CLEC."[32] With substantial independent ownership, an affiliate is much more likely to operate in its own independent best interests, rather than simply as an extension of the ILEC parent.

This idea originally was proposed by LCI International Telecom Corp. ("LCI") in a Petition filed with the Commission earlier this year.[33] In the Petition, LCI proposed a voluntary "Fast Track" path the central feature of which was a complete separation of the RBOCs' wholesale and retail activities. As a measure to provide the necessary independence for such a

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32 *See NPRM*, ¶¶ 86-87.

33 *See* "Petition of LCI International Telecom Corp. for Expedited Declaratory Rulings," CC Docket No. 98-5, filed January 22, 1998 ("*LCI Petition*").

structure to work, LCI proposed that a substantial percentage of ownership (40%) of the retail affiliate be placed in the hands of the public and outside the direct control of the RBOC. This ownership, LCI explained, would promote the retail affiliate's separate and independent operation: "Because its shares would be owned and publicly traded by persons and institutions expecting to earn profits from [the affiliate's] operations without regard to [its affiliation with the parent or the local operations entity], market pressures would help give the retail affiliate stronger incentives to earn a reasonable return on investments."[34]

CompTel recommends that the Commission adopt this feature of the LCI plan for any ILEC affiliate deemed not to be subject to Section 251(c). The 40% independent ownership proposed by LCI is high enough to create a number of independent obligations of the affiliate. First, publicly-traded, independent ownership will trigger registration and reporting obligations under the federal securities laws.[35] More importantly, ownership at the proposed level will ensure that the affiliate must separately state its profits and losses, and cannot file a consolidated tax return with the ILEC.[36] As a result, the affiliate's performance can be directly evaluated, and investors will demand that the affiliate make every effort to maximize its own best interests (not those of the ILEC parent). In addition, in states which require a two-thirds majority to approve

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34 *LCI Petition* at 17.

35 Typically, companies that go public must register with the SEC pursuant to the Securities Act of 1933. *See* Hazen, *Treatise on the Law of Securities Regulation*, 3rd ed., Vol. 1, §§ 1.6, 3.2 (1995).

36 Affiliated entries may file consolidated income tax returns. Affiliation is determined using an 80% voting and value test. *See Internal Revenue Code*, Vol 2 Ch. 6, Subch. A. §§ 1501, 1504(a) (April 1998). Thus, a 40% ownership difference would ensure that the ILEC and its affiliate are not considered to be affiliated under the federal tax rules.

"fundamental changes" such as merger or dissolution of an entity, this level of independent ownership will prevent an ILEC from unilaterally effecting such a change.[37]

This approach has both short-term and long-term benefits. Principally, an independent ownership requirement will establish the affiliate's independence from the start, rather than forcing the Commission to continuously police the ILEC-affiliate relationship. If the affiliate has a duty to others, it may not engage in activities solely to benefit its ILEC parent. In fact, because this requirement would substantially change the incentives under which the affiliate operates, it is a relatively deregulatory approach, requiring less supervision and enforcement from the Commission, as compared to other restrictions. Finally, the Commission should not be concerned that this requirement is too strict or rigorous because, as the *NPRM* emphasizes, the creation of advanced services affiliates is voluntary in the first place.

3. Advanced Services Affiliates Should Obtain All Traditional Telecommunications Capabilities Through the Purchase of UNEs, Not Through Total Service Resale.

Although the *NPRM* never explains precisely what benefits are expected to arise from its proposal, one alleged advantage of a separate affiliate is that it will expand the types of interconnection available to unaffiliated CLECs. The key to this result is the theory that an ILEC will make certain forms of interconnection available to its advanced service affiliate, which, by operation of the nondiscrimination obligation, will be expanded to all other CLECs as well. This

37 *See* Fletcher *Cyclopedia Corporations*, Vol. 15, § 7063 and Vol. 16A, § 8007.10 (1995). A number of states, including New York, Illinois and Texas require a two-thirds majority for mergers and/or dissolution. *Id.*

theory cannot work, however, if the advanced service affiliate does not take interconnection in a form that would be useful to unaffiliated providers.[38]

The principal threat to this theory is availability of the total service resale option. An "advanced services affiliate" is likely to combine its offering with traditional telecommunications service capabilities, including traditional local exchange service, in a one-stop shopping product. If it acquired the ILEC's local exchange service through total service resale, however, it would be able to provide a one-stop shopping product in a way that is practically infeasible for competitive providers. Due to the significant disadvantages of resale *vis a vis* unbundled network elements, no competing provider could offer a comparable one-stop shopping product using total service resale. Notably, the goals of increasing the interconnection options available to CLECs would not be furthered in the slightest if an ILEC affiliate took local service through resale. Instead, the progress of competition would be set back as advanced service elements that could be used by competitors are withdrawn.

Importantly, the Commission must realize that, although resale has significant disadvantages for unaffiliated CLECs, none of these disadvantages are material to an ILEC's advanced services affiliate. In fact, the affiliate would benefit from its relationship with the ILEC. First, the resale approach requires a CLEC to take whatever the ILEC is offering, and provides it with practically no ability to differentiate its service from the ILECs.[39] While this is a significant disadvantage for an unaffiliated CLEC, it will have no discernable effect on an ILEC's advanced services affiliate. Indeed, such an affiliate would have an incentive *not* to

38 Further, as shown in § (IV)(C)(4), ineffectiveness of the nondiscrimination obligation also can thwart the success of this theory.

39 Other than combining services in different volume pricing packages, there is nothing a CLEC using resale can do to create a different local service.

differentiate itself from the ILEC so as to capitalize on the ILEC's name and reputation.[40] Any confusion among customers would inure to the benefit the affiliate.

Second, resale pricing that may be unfavorable or prohibitive to CLECs, is not a barrier for the ILECs' affiliates. In fact, the affiliates would be largely indifferent to any pricing drawbacks because the reselling of services would be essentially internal transfer payments. It would not be concerned about the discount at which resold service is available, because the affiliate would not need to make a separate profit on its local services.[41]

Also, unlike an unaffiliated CLEC, the ILEC affiliate would not suffer from the lack of exchange access revenues in a resale environment. At prevailing resale discount levels, significantly few customers are profitable based on exchange revenues alone. Rather, the ability to collect access charges (not available through resale) often will make a critical contribution toward the profitability of serving a customer. To an ILEC affiliate, however, there is no actual economic loss associated with not collecting access charges. In other words, it is not a question of whether the ILEC parent will receive these revenues from an economic perspective, but merely in which entity's account are they recorded. Additionally, to the extent the entity is *paying* access charges, an ILEC affiliate could continue paying access charges to its ILEC parent, knowing that, in the end, its all money in the same pockets. To an unaffiliated entity, by

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40 The affiliate's incentive to associate itself with the ILEC, so as to benefit from the ILEC's name and reputation, is a primary reason that CompTel is calling for a prohibition on the transfer of any assets from the ILEC to the affiliate, including its brand name. *See* § (IV)(D).

41 If, as CompTel recommends elsewhere in these comments, the affiliate possesses significant independent ownership then it would have a greater incentive to turn a profit as a stand alone entity. Nevertheless, to the extent that one of the purposes of the separate affiliate is to promote the availability of UNEs, the Commission still should prohibit the ILEC affiliate from engaging in total service resale regardless of the degree of outside ownership.

contrast, the payment of access charges is a very real (and exorbitant) cost of providing service. The carrier's inability to obtain cost-based access is a principal element driving up its retail rates.

The solution is to require an ILEC's affiliate to assemble the capabilities it needs to provide retail services through the purchase of unbundled network elements. By forcing an affiliate to purchase UNEs, the Commission replicates some of the economic choices that would be made by "truly separate" entities. Moreover, requiring the ILEC to provide UNEs to its affiliate is the only way the Commission can achieve its apparent goal of expanding the range of interconnection and network elements available to CLECs.

4. The Commission Should Prohibit Joint Marketing and Advertising.

Although the *NPRM* proposes that the ILEC and its affiliate "operate independently," it makes no mention of cooperative arrangements such as joint marketing or advertising. In order to dispel any potential ambiguity, and to ensure that the separation between the entities is real, not illusory, the Commission should explicitly prohibit the ILEC and the affiliate from engaging in any joint marketing and/or advertising. Instead, the affiliate should stand or fall on its own marketing efforts, "just like any other CLEC."[42]

C. The Seven Proposed Safeguards Must be Strengthened.

The seven safeguards proposed in the *NPRM* do not go far enough to ensure "true separation."[43] If the Commission wants advanced services affiliates to function in the

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42 *NPRM*, ¶ 87.

43 *See NPRM*, ¶ 96. The safeguards are listed herein *See* § (IV)(B).

marketplace just like other CLECs, then the Commission must clarify and strengthen the seven separation and nondiscrimination criteria.

1. Separation Between the ILEC and its Affiliate Must be Complete.

The *NPRM* proposes that the ILEC "operate independently" from its affiliate, and specifically proposes that the ILEC and its affiliate not jointly own switching facilities or the land and buildings on which such facilities are located.[44] It also proposes that the affiliate have separate officers, directors and employees.[45] CompTel submits that these requirements do not go far enough to separate the ILEC and its affiliate. Instead, the Commission must require complete and total separation between the ILEC and its affiliate.

In addition to joint ownership of switching facilities, the Commission should prohibit the ILEC and its affiliate from jointly owning *any* facilities or equipment. This should include transmission capacity, databases, signalling systems, and multiplexers or other telecommunications equipment. It also should include non-telecommunications assets, including (but not limited to) equipment used to provide enhanced services. Moreover, the ILEC and its affiliate should not jointly own any type of real property or interests in physical space, not simply the land or buildings associated with switching equipment. There is no reason to conclude that ILEC advantages are limited to switching capabilities or equipment. Rather, the same types of concerns present with respect to switching are present with any equipment or property jointly owned or operated by an ILEC and its affiliate.[46]

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44 *Id.*

45 *Id.*

46 Instead of obtaining access to such items through joint ownership, the affiliate should obtain any of these items from the ILEC pursuant to the interconnection and unbundling

(continued...)

Furthermore, an ILEC should not provide non-telecommunications functions and services to its affiliate, except on just, reasonable and nondiscriminatory terms and conditions that are available to all unaffiliated providers. This requirement should include both administrative functions – such as procurement, "back office" administration, legal, etc. – as well as non-telecommunications services – such as billing and collection services.

2. The ILEC Affiliate Must Not Receive any Information Advantages, Including Favorable Access to CPNI.

The Commission proposes that the ILEC, "in dealing with its advanced services affiliate may not discriminate in favor of its affiliate in the provision of any goods, services, facilities or information or in the establishment of standards."[47] Although the Commission did not specifically address customer proprietary network information ("CPNI") when it proposed this requirement, it is important that the Commission prohibit an ILEC from discriminating in the provision of *any* information to its affiliate, including in the provision of CPNI.

Such a requirement is critical to establishing the independence of the proposed affiliate. If an ILEC affiliate is able to receive CPNI that is not also available to competing providers, it would obtain an insurmountable information advantage in the market for advanced services. It is commonly accepted that an ILEC's CPNI is much more complete and more valuable than other carriers' CPNI, due to its long-standing preferred position as the sole local exchange provider in its region. No independent provider can hope to match the advantage that could be derived from

(...continued)
provisions of the Act. If such items are provided subject to the Act, then they must be made available as cost-based rates, and offered on a nondiscriminatory basis to all telecommunications carriers.

47 *Id.*, citing 47 U.S.C. § 272(c)(1).

mining the ILECs' massive CPNI for advanced services customers. Importantly, ILEC CPNI would be particularly useful in marketing services which combine voice and data applications, such as the xDSL services.

Thus, to provide true separation, the ILEC affiliate should not receive any preferential access to the ILEC's CPNI. It should be treated as a third party, just as unaffiliated CLECs are, under the FCC's CPNI rules.[48] An ILEC affiliate, therefore, should obtain access to CPNI only upon receiving written authorization.

The Commission should not repeat the error it made in the *CPNI Order*, when it permitted preferential access to CPNI for a BOC's Section 272 affiliate.[49] When it initially addressed this issue in the *Non-Accounting Safeguards Order*, the Commission recognized that the word "information" "includes, but is not limited to, CPNI. . . ."[50] This interpretation comports with the plain language of that term, as CPNI is, by definition, a particular type of "information."[51] Nevertheless, in the *CPNI Order*, the Commission – while not denying that CPNI is "information" consistent with the common usage of that term—permitted a Section 272 affiliate to access the BOCs' CPNI whenever it also provided service to the customer.

As CompTel explained in its petition for reconsideration of the *CPNI Order*, there is no statutory or policy basis for the Commission's decision to allow discrimination in an ILEC's

48 47 C.F.R. §§ 64.2001, *et. seq.*

49 *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information,* Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-115, (rel. Feb. 26, 1998) ("*CPNI Order*").

50 *Non-Accounting Safeguards Order*, 11 FCC Rcd at ¶ 222.

51 47 U.S.C. § 222(f)(1) defines CPNI as "*information* that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications services. . . " (emphasis added).

treatment of CPNI.[52] Section 222 (which governs the use of CPNI) does not operate to the exclusion of other statutory policies.[53] Where there are statutory or public interest reasons to impose additional restrictions on information, which may include CPNI, the Commission has the authority and the obligation to do so. In the instant proceeding, use of CPNI would confer an unfair information advantage upon the affiliate, and allow it to exploit the ILEC's extremely valuable bank of detailed customer information. The Commission should not infuse the ILEC affiliate with such advantages.

CompTel notes that the goal of ensuring that an affiliate operates separately from the ILEC – which is one of the purposes of the Section 272 interLATA affiliate provision --is even stronger in this proceeding. The NPRM clearly articulates that its goal is to define an entity that is "truly separate" and operates just like any other CLEC.[54] Such a hypothetical entity is even more separate than a BOC interLATA affiliate would be, so it is even more important to prohibit the ILEC from conferring any type of information advantage upon its affiliate, including CPNI advantages.

3. Unaffiliated CLECs Must be Able to Adopt Any Portion of an Interconnection Agreement Between an ILEC and its Advanced Services Affiliate.

The Commission's seventh requirement permits the advanced services affiliate to interconnect with the ILEC pursuant to tariff or interconnection agreement. Further, it instructs the ILEC to make available whatever network elements, facilities, interfaces and systems equally

52 *See* "Competitive Telecommunications Association Petition for Reconsideration," CC Docket No. 96-115, filed May 26, 1998.

53 *See, e.g.*, 47 U.S.C. § 275(d) (restricting the use of alarm monitoring data that may include CPNI).

to its affiliates and to unaffiliated entities.[55] CompTel agrees that it is essential that the ILEC make available to unaffiliated providers any and all network elements, facilities, interfaces and other interconnection methods that it makes available to the affiliate.

It is not enough, however, to require that the entirety of an interconnection agreement be made available to unaffiliated providers. Unlike in a situation where an unaffiliated provider negotiates an interconnection agreement, there is no incentive for an affiliate to engage in the "give and take" of negotiations. To the contrary, the affiliate has an incentive to accept "poison pill" provisions in its interconnection agreement in order to make it unattractive to competing providers. To use a current controversy as an example, an affiliate has an incentive to accept an ILEC's demand that reciprocal compensation not be paid for traffic completed to internet service providers, simply because the presence or absence of reciprocal compensation has no net effect on the ILEC parent's bottom line. Such a provision, however, would be prohibitive for unaffiliated CLECs, because they do, in fact, incur costs in transporting and terminating this traffic. By inserting provisions such as this, an ILEC can effectively make the entire agreement unattractive to the CLEC, thereby shielding interconnection or network elements from the nondiscrimination requirement.

To correct this ILEC tampering with the negotiation process, the Commission should require an ILEC to make interconnection or network elements provided to its affiliate available to unaffiliated providers on an individual basis. That is, the Commission should adopt a revised rule that unaffiliated CLECs may adopt all or any portion of an interconnection agreement

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(...continued)
54 *See NPRM*, ¶¶ 86-87.

55 *NPRM*, ¶ 96.

between the ILEC and its advanced services affiliate.[56] This way, the unaffiliated provider can take particular elements, but is not burdened by "poison pill" provisions designed to thwart the competitive provision of service.

D. The Commission Should Establish a Bright-Line Rule that Any Transfer from the ILEC to the Affiliate Would Make the Affiliate an Assign of the ILEC.

In the *NPRM,* the Commission notes that, in order for an ILEC's advanced services affiliate to escape ILEC obligations under Section 251(c), the affiliate must not be a successor or assign of the ILEC.[57] The Commission reiterates its concern that, for an affiliate to *not* be an assign, it must be "functioning like any other competitive LEC. . . ."[58] Accordingly, the Commission tentatively concludes that, with respect to the transfer of facilities, the following actions would make the affiliate a successor or assign subject to ILEC obligations: (1) a wholesale transfer of network elements used to provide advanced services, or (2) a transfer of local loops from an ILEC to its advanced services affiliate.[59] Additionally, the Commission considers the possibility that other asset transfers would result in the imposition of ILEC regulation on the affiliate.[60] CompTel contends that any transfer of equipment or local loops, or

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56 If the pending review of the Eighth Circuit's *Iowa Utilities Board* decision is successful, CLECs would have these rights with respect to all agreements, not just the agreement with the ILEC. *See Iowa Utils. Bd. v. FCC*, 120 F.3d 753, (8th Cir. 1997), *cert. granted sub nom., AT&T Corp. v. Iowa Utils. Bd.*, 118 S.Ct. 879 (1998) ("*Iowa Utilities Board*"). Given the unique concern over self-dealing when an ILEC negotiates with its affiliate, the Commission should adopt such a rule for ILEC-affiliate agreements, regardless of the ultimate interpretation of Section 251(i) of the Act.

57 *NPRM,* ¶ 104.

58 *Id.*

59 *Id.*, ¶¶ 106-107.

60 *Id.*, ¶ 113.

any other asset listed in the *NPRM*, from the ILEC to its advanced services affiliate would subject the affiliate to ILEC regulation. Moreover, the prohibition on transfers should include any tangible or intangible assets, including customer accounts.

CompTel urges the Commission not to permit the ILECs to transfer any facilities or assets to its advanced services affiliates, no matter what the circumstances. It would be inconsistent with the concept of a "truly separate" affiliate if the affiliate were to establish itself with equipment or facilities from its parent ILEC. If the Commission wants the affiliate to act like a competitive LEC, it must not allow a transfer of assets such as customer accounts, employees or brand name.[61] Since other competitive LECs cannot purchase such assets from the ILEC to begin their operations, it would be unfair to provide the ILEC's advanced services affiliate with this head start.

Also, every asset that is transferred from the ILEC to its affiliate is one that is removed from Section 251(c). If existing ILEC regulation provided sufficient incentive for the deployment of such facilities in the ILECs' network, then there patently is no need for the additional "incentive" the Commission anticipates that its proposal might provide. Moreover, it would affirmatively harm competition to remove such facilities from Section 251(c)'s obligations. Indeed, the principal danger of the *NPRM* proposal is that it will "freeze" the existing network and lead, over time, to a relic POTS network subject to Section 251. A transfer of existing network facilities is even worse, as it is an actual *step backward* for the network.

One type of asset transfer, in particular, deserves special discussion. An ILEC's brand name is an asset that was built up over time. Indeed, the ILEC's name has significant value as a service mark. Any use by the affiliate of the name, or a similar name, is a transfer to the affiliate of some of the value of the brand. To the extent that the affiliate successfully trades off the confusion caused by similar brand names, it receives a substantial unfair advantage over its competitors.[62] Instead, the Commission should establish a standard that the affiliate, like any independent CLEC, may not infringe upon the ILECs' trade or service marks. That is, if an unaffiliated entity used the ILEC's name, and that use would infringe the ILEC's trademark, then the affiliate should be prohibited from using that name.

V. THE COMMISSION SHOULD ADOPT THE "NEXT GENERATION" OF COLLOCATION RULES

Collocation reform is long overdue. In an effort to improve collocation available to CLECs today, CompTel commissioned a study to examine the reasonableness and effectiveness of traditional collocation methods offered by ILECs. That study, which is attached as Attachment B to these comments,[63] compared the typical ILEC model of collocation to experiences in competitive markets, such as the long distance, Internet and competitive CLEC market. The study demonstrates that the traditional "caged" model for collocation is unnecessary, increases the cost and complexity of collocation, and inefficiently uses scarce collocation resources. The study recommends the adoption of a cageless collocation environment, and proposes a number of reforms to improve the speed and availability of traditional and cageless collocation methods. The study's recommendations are summarized

(...continued)
61 *Id.*

62 Notably, the problem is not solved by requiring a royalty payment since that payment would be no more than an internal transfer payment, of no economic or regulatory consequence.

63 CompTel White Paper No. 2, *Uncaging Competition: Reforming Collocation for the 21st Century*, written by Robert Falcone and Joseph Gillan (September 1998) (*Uncaging*
(continued...)

below.

In collocation arrangements available today, ILECs typically require competitors to take a minimum 100 square feet of collocation space, separated by physical barriers such as a wire "cage," and impose significant design and construction charges for each collocation arrangement. Moreover, fueled by the ILECs' unnecessary insistence upon cage-based collocation, available space in ILEC end offices is being exhausted rapidly. For example, Bell Atlantic recently reported that, of 70 end offices surveyed in the state of New York, 17 (or 24%) currently do not have space for additional dedicated physical collocation. Often, additional collocation space is offered only after "conditioning" at a prohibitive cost and extensive delay. In short, collocation arrangements offered by ILECs today typically are large, cumbersome, costly, and slow to provision. Together, these problems create significant barriers to entry in the market, including the market for advanced services.

The current model of collocation was established nearly ten years ago – at a time when competitors, the market and interconnection technology were vastly different than they are today. Many of the common features of collocation arrangements – most notably, the presumption that collocation space must be physically separated using "cages" or similar barriers – can be traced to this initial model of collocation. These perceptions do not match with the primary needs for collocation today. Continual advances in technology are producing collocation equipment that is of decreasing dimension but increasing functionality. Such equipment does not require dedicated spaces of 100 square feet, and can instead be housed in common "racks" taking up significantly less space. The advent of xDSL technologies will increase the need for smaller,

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Competition).

more efficient collocation arrangements to accommodate new waves of equipment.

Fortunately, experience in competitive markets provides proof that there are feasible alternatives to the isolation of each entrant's equipment in dedicated caged environments. Long distance carriers, Internet providers and CLECs all promote collocation arrangements as a significant part of their competitive businesses. In each of these markets, the standard collocation method is cageless collocation – which is favored because of its speed, efficiency and low cost. For example, the largest Network Access Point on the Internet, MAE East – which is estimated to handle roughly 60 percent of all *worldwide* Internet traffic—houses each carrier's equipment side-by-side, without collocation cages, in a single "collocation farm."[64]

Thus, in competitive markets, equipment of multiple providers is housed side by side, without cages or other physical barriers between entities. Security and reliability concerns are addressed by simple, common sense means, such as clear labelling of equipment, "keyed" access, video surveillance and locking cabinets where needed.

CompTel strongly urges the Commission to move beyond the traditional caged model of collocation, and adopt the cageless collocation option prevalent in competitive markets. ILECs should be required to offer cageless collocation (in addition to traditional caged collocation) in two basic forms. First, ILECs should offer "shared space cageless collocation" in which the equipment of multiple CLECs is collocated side by side, in an area dedicated for CLEC collocation. Second, ILECs should offer "common space cageless collocation" in which CLEC equipment is collocated in the same controlled environment as the ILEC's own equipment, with ILEC and CLEC equipment separated only by the minimum space necessary to clearly identify each provider's equipment. At the same time, the Commission should implement a number of reforms to the existing collocation process, to increase the space available for collocation and to reduce the cost and delay of implementing a caged collocation arrangement. Each of these recommendations are discussed below, along with other issues raised by the Commission, in the order they are addressed in the *NPRM*.

A. National Standards

CompTel strongly supports the adoption of additional national standards for collocation.[65] The Commission has authority under Sections 251(c)(6) (physical collocation), 251(c)(2) (methods of interconnection and access for the transport and routing of traffic), and 201(b) (just and reasonable charges, practices, classifications and regulations) to establish national standards for collocation.

CompTel agrees with the Commission[66] that any standards it adopts should constitute the minimum requirements an ILEC must satisfy in its collocation practices. Many states have been very active in developing innovative collocation approaches. Indeed, many of the proposals under consideration here were developed by state commissions in states such as New York and Texas. The Commission should continue to allow states to experiment with new approaches that build upon the national standards adopted in this proceeding.

B. Collocated Equipment

CompTel agrees that ILECs "should not be permitted to impede competing carriers from offering advanced services by imposing unnecessary restrictions on the type of equipment that

(...continued)

64 *Uncaging Competition*, p. 21.

65 Id., ¶ 123.

competing carriers may collocate."[67] Thus, all multi-purpose equipment, regardless of whether it also performs switching functions, should be permitted to be collocated. This would encompass routers, which perform switching functions in a data environment. CompTel recommends that the Commission prohibit not only "unnecessary" equipment restrictions, but *all* restrictions on the type of equipment that may be collocated. The FCC cannot keep pace with the rapid technological development of equipment, and any attempt to establish an "inventory" of permissible equipment will needlessly delay the deployment of new equipment in the network. Rather than permit endless battles over each new type of equipment, the Commission should remove all restrictions on the type of equipment that may be collocated.

CompTel does not believe that size restrictions are necessary at this time for collocated equipment.[68] Instead, the reforms CompTel recommends– the adoption of cageless collocation, limits on the amount of space an ILEC or its affiliate may occupy and increased availability of collocation space – should reduce concerns over space exhaustion. Toward this end, CompTel agrees that an ILEC affiliate, including both the advanced service affiliate contemplated in this docket as well as its Section 272 affiliate, should not be permitted to occupy the "last" collocation space available in an ILEC premise.[69] By prohibiting the ILEC from being the cause of an exhaust condition, the Commission creates incentives for the ILEC to find additional collocation space, by removing retired equipment or reallocating unnecessary functions from the premises.

(...continued)

66 Id., ¶ 124.

67 Id., ¶ 129.

68 *Id.*, ¶ 131.

69 *Id.* In addition to this requirement, the Commission should take further measures to

(continued...)

In addition, CompTel recommends that the Commission take further action to clarify that CLECs have an unlimited right to establish cross-connections to other CLECs' equipment.[70] Despite the Commission's rule allowing such cross-connections,[71] a few ILECs continue to impose unnecessary restrictions on a CLEC's ability to exercise that right. Accordingly, the Commission should reaffirm that a CLEC has an *unrestricted* right to establish cross-connections with other CLECs.

C. Collocation Space

CompTel agrees with the Commission's proposal to require ILECs to offer shared collocation space, collocation cages of any size, and cageless collocation.[72] Cageless collocation is the preferred option in competitive markets, including the long distance market, the Internet, and collocation offered by CLECs. Cageless collocation is less costly than caged collocation because it uses space more efficiently, and reduces or eliminates most construction costs.

Two forms of cageless collocation should be offered. First, ILECs should offer "Shared Space Collocation." This type of cageless collocation establishes a "shared area" within an ILEC premise dedicated to the collocation of CLEC equipment. Equipment would be physically separated from that of the ILEC, but each individual CLEC's equipment would be located side-by-side in pre-installed racks or in racks dedicated to individual CLECs. The CLEC's authorized employees would have full access to the shared area for purposes of installation, maintenance and repair.

(...continued)
ensure that an ILEC does not waste scarce collocation space. *See, infra.*, Section V(D).

70 *NPRM*, ¶ 133.

71 *See* 47 C.F.R. § 51.323(h).

Second, ILECs also should offer "Common Space Collocation." This type of cageless collocation also locates collocated equipment side-by-side in dedicated or pre-installed racks, with the difference that CLEC equipment is located in the same conditioned environment as the ILEC's own equipment. The equipment should be separated (such as in a separate aisle) only to the extent necessary to clearly identify the CLEC's equipment. The principal benefit of this arrangement is that it makes the most efficient use of available space. This may be necessary in premises with extremely limited space, and, in particular, may be the only feasible method of collocating equipment in remote terminals and other sub-loop environments.

Security can be provided in a cageless environment through a number of common (and common sense) measures in use in other contexts today.[73] Importantly, the Commission should recognize that access to ILEC central office space *already* is controlled. The issue is not creating a secure environment, but sharing it without diminishing its effectiveness. Once again, lessons from collocation in the long distance, Internet and competitive CLEC markets is instructive. Security can be provided through a combination of the following means:

Labelling: The most common risk in a cageless environment is human error. To minimize this risk, all equipment should be clearly labelled so that a technician can easily identify its own equipment. Proper labelling will help prevent mistakes in the field, and is considered one of the most important requirements for proper field service.

Verified Access: Proper security also can be provided by systems which enable access to be tracked with precision, identifying both who accessed a particular area and the time that

(...continued)
72 Id., ¶ 137.

73 Id., ¶ 140.

person entered/exited the area. A number of methods can be used to track access in this way, the most common being manned access with sign-in/sign-out procedures or access through controlled "smart" key card systems. Importantly, such systems should track access by *all* persons to the area, including the ILEC's own personnel. Data from such methods would provide an ILEC/CLEC with the detailed information about who was in an area at the time a trouble occurred, and can be extremely effective in identifying and isolating errors or security problems.

Video Surveillance: Another way to improve security is to monitor access while persons are in a secure area. Continuous recording video surveillance equipment is often used for such purposes, and could be adopted to ensure appropriate security within common areas.

Locking Cabinets: The most prevalent form of security in competitive collocation arrangements is the use of locking cabinets. Under this arrangement, equipment is located within a rack or cabinet, which can be locked to require keyed entry. Each CLEC with equipment in the cabinet would have access to that equipment.

Regarding space preparation charges,[74] CompTel recommends that an initial CLEC in an area pay site preparation costs based on the percentage of the total space it is occupying. This is the general approach proposed by Bell Atlantic in New York. There is no reason that costs could not be allocated in this manner by all ILECs. However, CompTel does not support Bell Atlantic's proposal that would allow the ILEC to impose the cost of unused space on the CLEC if future demands fall short of expectations.

Finally, there are a number of things the Commission can do to decrease the time it takes to establish traditional collocation arrangements. ILECs should be required to conduct "pre request" site surveys to identify premises with potential space allocation issues. This pre request survey will help identify potential problems in advance and will improve the response time once an ILEC receives a request for a specific location. In addition, an ILEC should be required to identify and certify additional third-parties that may perform collocation construction, in order to relieve delays when existing crews are fully scheduled. Also, CompTel supports the adoption of standardized provisioning intervals and pre-determined penalties for failure to meet those intervals. An ILEC's collocation offering should be a clearly defined, predictable product, not the ad hoc process that exists today.

D. Space Exhaustion

The final collocation issue raised in the *NPRM* concerns procedures to identify potential space exhaustion problems. If the other reforms recommended by CompTel are adopted, most space exhaustion problems should be alleviated, as available space will be used in a much more efficient way. To further reduce potential space exhaustion problems, CompTel supports a number of additional reforms.

First, as discussed above, CompTel recommends a rule requiring ILECs to conduct a "pre request" survey of its premises. These surveys can help identify potential exhaustion conditions *before* a CLEC requests collocation, so that state commissions and the parties can address these conditions before they become a problem. This proposal can be used in conjunction with the CLEC request procedure[75] whereby an ILEC would provide detailed information concerning the premises, the number of collocators, and any modifications to the space. An ILEC should be

(...continued)
[74] Id., ¶ 143.

[75] Id., ¶ 147.

required to conduct the pre request survey ahead of time, however, even if a CLEC has not yet requested information concerning a particular premise.

CompTel supports the proposed "walk-through" procedure[76] when an ILEC denies a request for physical collocation due to space limitations. In these circumstances, an ILEC should provide a detailed floor plan to both the relevant state commission and any requesting CLEC. The plan should identify all floor space in the office, how each space is being used, what space (if any) is reserved for future use, and the planned future use of the space. In addition, the plan should identify what equipment, if any, is retired in place in the office. Any requesting CLEC should be given the right (at no charge) to conduct a walk-through of the premises to examine claimed lack of space.

If a CLEC is able to identify a location where its request could be accommodated, this should create a rebuttable presumption that sufficient space is available. The ILEC should be required to present evidence demonstrating why the space could not be made available.

In addition, before a commission may accept an ILEC claim that no space is available, the ILEC should be required to remove any equipment that is retired in place and should be required to reassign space used for non-network purposes (*e.g.*, administrative offices and other functions that could be performed at locations outside the collocation premises).

Finally, the Commission must adopt rules to prevent an ILEC or any of its affiliates from using too much collocation space. Such a rule will be particularly important if the Commission decides to go forward with its advanced service affiliate proposal. If an ILEC creates a separate advanced service affiliate, this would create yet another potential party seeking collocation, and will further tax resources used to provide collocation. Moreover, the ILEC affiliate is likely to